

Message Text

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INFO AMEMBASSY CANBERRA

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TAGS: UN, PFOR, AS

SUBJECT: UNGA LEGAL COMITE : DIPLOMATIC ASYLUM

REF: USUN 5377

1. LEGAL COMITE BEGAN CONSIDERATION, 25 NOV, OF AUSTRALIAN DIPLOMATIC ASYLUM (DA) INITIATIVE. AUSTRALIAN DEL (AMB. BRENNAN) INTRODUCED ITEM WITH STATEMENT (COPY POUCHED L/UNA-STOWE) MAKING MAIN POINTS THAT: (A) FUNDAMENTAL QUESTION OF LEGALITY OF CONCEPT OF DA MUST BE FACED; (B) IN AUSTRALIAN VIEW GENERAL RIGHT OF STATE TO EMPLOY DA EXISTS; (C) PRACTICE OF DA IS NOT CONFINED TO LATIN AMERICAN STATES OR LATIN AMERICAN REGION; (D) PRINCIPLES OF DA IN GENERAL AND SAFE CONDUCT IN PARTICULAR SHOULD BE STUDIED AND ARTICULATED BY UN GENERAL ASSEMBLY--THOUGH NOT THIS YEAR; AND (E) PRACTICE OF DA WILL BE ENHANCED, AND PROPER FUNCTIONS OF DIPLOMATIC PREMISES WILL BE CLARIFIED, AS A RESULT OF GENERAL ASSEMBLY CONSIDERATION OF ITEM. BRENNAN NOTED THAT HIS DEL WITH (UNNAMED) COSPONSORS WILL FORMALLY TABLE DRAFT RES, AS REFLECTED REFTEL, BY ABOUT WEDNESDAY, 27 NOV.

2. AUSTRALIAN REMARKS SUPPORTED BY GRENADH BRAZIL, COLOMBIA, COSTA RICA, CHILE, ECUADOR AND NEW ZEALAND.

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LATINS GENERALLY AGREED THAT UN EXAMINATION OF DA SHOULD

PAY DUE ATTENTION TO LATIN PRACTICE, ESPECIALLY TO HUMANITARIAN NATURE OF LATTER. BRAZIL AND COLOMBIA DELS ESPECIALLY EMPHASIZED THAT LATIN DA PRACTICE WAS INTENDED FOR GENUINE POLITICAL REGUGEES AND NT COMMON CRIMINALS. IN LATTER CATEGORY, COLOMBIA DEL INCOUDED THOSE GUILTY OF VIOLENT ACTS AGAINST PERSONS.

3. INDIAN DEL OFFERED IT PRELIMINARY VIEWS THAT:

(A) DA AND TERRITORIALASYLUM ARE NOT COMPLEMENTARY, AND STATE PRACTICE RE DA IS VERY CLEAR; (B) AND ICJ SAID IN ASYLUM CASE, DA INVOLVES DEROGATION FROM TERRITORIAL SOVEREIGNTY OF A STATE AND SUCH DEROGATION CANNOT EXIST UNLESS A (HOST) STATE HAS SPECIFICALLY AGREED THERETO; (C) SPECIFIC AGREEMENTS TO SUCH DETOGATION RESULT ONLY FROM THE ENTRY INTO INTERNATIONAL AGREEMENTS TO THAT EFFECT, SINCE DA DOES NOT EXIST AT CUSTOMARY INTERNATIONAL LAW, (D) THE LATIN AMERICAN STATES ARE THE ONLY ONES WHICH HAVE ENTERED INTO SUCH CONVENTIONS, AND THUS ONLY IN THEIR TERRITORY CAN DA BE PRACTICED; (E) ADDITIONALLY, IMMUNITIES OF A DIPLOMATIC MISSION ARE INTENDED FOR THE PURSUIT OF AND EXTEND TO THE PROPER FUNCTIONS OF A DIPLOMATIC MISSION, WITHIN WHICH THE GRANTING OF DA DOES NOT FALL; (F) ALSO, THE PRACTICE OF SHATES SHOWS THAT EVEN THOUGH DA IS NOT RECOGNIZED BY MOST STATES, MANY STATES GIVE REGUGE TO REFUGEES IN URGENT AND HIMANITARIAN NEED; AND (G) IN CONCLUSION, STATE PRACTICE CLEARLY SHOWS THAT DA IS NOT AN ACCEPTED CONCEPT UNDER INTERNATIONAL LAW.

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